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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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HM12/0913  
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EXAMINER  
LEVY, N

ART UNIT	PAPER NUMBER
1616	15

DATE MAILED: 09/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09 326014

Applicant(s)

BOTTI et al

Examiner

MBJ/ley

Group Art Unit

1616 15

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 8/27/01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-18 & 36-45 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-18 & 36-45 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 13
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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Receipt is acknowledged of IDS and request.

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 7-12, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Autant et al Fr 2702929.

The abstract disclosed the instant concept-a polymeric matrix of active agent, shown at p.4 to include the instant triazole fungicides - azaconazole, and @ p.7. The polymers at p.8. The ziza at claim 7. The plasticizer at p. 6 along with adjuvants.

Claims ~~1-8~~, 36-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuei et al 5589194 in view of Autant and further in view of Kanda 0201214, Stock and at the instant specification, admission of P.1, 2 and Russell et al W0 90/03732.

Tsuei (col 5) puts actives in a polymer matrix, with silica adjuvants, filler and plasticizers (col. 6). It would be obvious to incorporate an Autant triazole in the agricultural active fungicides. Kanda specifies fungicides, azoles (p. 11) as agri actives in Microparticles (p. 15, 16), of 2-50 microns (p.21, 22 example 6) in liquid dispersion, with agri adjuvant. Stock shows the crop protection fungicides, with adjuvants, for foliar application.

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Tsuei discloses the instant inventive composition microparticle polymers suitable for agri application, except for use of particular active of the instant triazoles. Secondary references however, teaches the instant elements, crop use, and actives.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize pest protection of Tsuei to use the microparticles with actives as desired to control the pest of concern.

The particular triazole are all well known agri fungicides (p 1, 2) as are the particular formulation (see p. 5-7, Russell) as this Office takes notice, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

Applicant's arguments filed 7/02/01 have been fully considered but they are not persuasive. Applicant argues for unexpected results, but only cyprocanazole as so shown, and the benefits are not claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Neil Levy

KB

September 7, 2001

A handwritten signature in black ink, appearing to read "Neil S. Levy".

NEIL S. LEVY  
PRIMARY EXAMINER